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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by the Netherlands under article 29, paragraph 1, of the Convention

Addendum

Information received from the Netherlands on follow-up to the concluding observations*

[Date received: 16 December 2015]

I. Introduction

1. The Committee on Enforced Disappearances (CED, the Committee) considered the report submitted by the Netherlands under Article 29, paragraph 1 of the Convention for the Protection of all Persons from Enforced Disappearance at its 82nd and 83rd meetings, held on 18 and 19 March 2014.

2. In paragraph 44 of its concluding observations (CED/C/NLD/CO/1), the Committee asked the State party to provide, by 28 March 2015, follow-up information in response to the Committee's recommendations as contained in paragraphs 25, 33 and 35 of the Concluding Observations.

3. In this document, the Kingdom of the Netherlands provides the requested follow-up information.

II. Information relating to paragraph 25 of the concluding observations

4. The Protection of State Secrets Act allows for the possibility to designate places out of bounds for unauthorised persons in order to protect information that needs to be kept secret in the interest of State security. The Netherlands Institute for Human Rights does not (independently) have access to state secrets, and should thus not be granted access to such

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designated places. The restriction of Article 7 paragraph 2 of the Netherlands Institute for Human Rights Act only excepts these designated places, which are not "places of detention". There is no need, therefore, to remove the restriction as set out in Article 7 paragraph 2.

5. The inspectorates of the national preventive mechanism function independently within the parameters of ministerial responsibility and the legal framework formulated both at political and policy level. Inspectorates are hierarchically subordinate to their respective ministers and each minister is also able to indicate areas to be studied, while maintaining the core value of (risk-based) independent programming. The inspectorates draw up their own annual work programmes.

6. Inspections are independent both in terms of their findings and the selection and implementation of measures in individual cases. The findings of inspections are published, subject to the limits laid down by law. The inspectorates can flag up their concerns, including warnings that specific policy or legislation has serious shortcomings, and these concerns will reach the minister without interference or filtering. The inspectorates' reports are sent to parliament via the minister without any intervention either by the minister or policymakers. If applicable, a policy response will be sent separately. A supervisory body's organisational position is not the decisive factor in the perception of its independence. Positioning is not an end in itself; it is more important that the supervisory body adopts an independent and steadfast attitude.

7. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted in New York on 18 December 2002, has been ratified by the Kingdom of the Netherlands, but will be applicable only in the Netherlands in Europe (see Dutch Treaty Series 2010, 273). With respect to Bonaire, St Eustatius and Saba, it should be noted that in the run-up to the constitutional reforms which took effect on 10 October 2010 (and which are described in the report) the decision was taken in 2008 that Antillean legislation would initially be maintained in so far as possible. It was agreed with Bonaire, St Eustatius and Saba that legislative restraint would be exercised in order to avoid overburdening the islands, and that this approach would continue at least until the evaluation due to be conducted 5 years after 10 October 2010.

III. Information relating to paragraph 33 of the concluding observations

8. The rights of victims of crimes have been established in the Code of criminal procedure (Wetboek van Strafvordering), Articles 51a – 51h. These rights include proper treatment by judges and prosecutors, information on their rights, information on the start and state of play of the case against the suspect (of the crime that harmed the victim). The information on the case encompasses the abandonment of the prosecution or investigation, the nature of the charges, the place, date and time of the trial and information on the final decision in the criminal case. At the request of the victim the prosecutor shall grant access to the files of the case which are relevant for the victim. The victim is entitled to legal assistance and to ask for a translation of documents related to the case (if the victim doesn't understand the Dutch language). Furthermore, the victim has the right to speak during the trial, regarding the effects that the crime caused to him. Surviving relatives have the same right to speak (a draft bill is currently pending in parliament to grant all rights of victims to surviving relatives). Finally the victim and other persons concerned have the right to ask the court of appeal to order the prosecution of a crime, in case the public prosecutor has not started prosecution.

9. There is no specific right to know the truth regarding the circumstances of an enforced disappearance and the fate of the disappeared person, but information will be available by means of the use of the right to information on the case, including the right to inspect the file.

10. If the legal instruments of the Code of criminal procedures are deemed by the victim to not be sufficient, the victim or his surviving relatives could ask a civil law judge to order access to information (on the truth, circumstances and fate of a person) administered by the government or government agencies. In addition, citizens have the right to claim the disclosure of governmental information by means of an administrative law procedure (Wet openbaarheid bestuur).

11. With regard to compensation, it should be noted that victims of criminal offences can recover compensation from the perpetrator in the criminal proceedings. If the criminal court orders the perpetrator of a violent or sexual offence to pay compensation and he/she fails to do so within eight months of the judgment becoming final and binding, the victim will receive an advance payment of the sum from the state. A victim can also recover damages from the perpetrator through the civil courts. Finally, the Criminal Injuries Compensation Fund may pay out financial compensation to the next of kin or to victims of violent offences who suffer serious psychological or physical injury as a result of the offence. The fund can only pay compensation if the violent offence has been committed in the Netherlands in Europe; Bonaire, St Eustatius and Saba are not yet covered by the fund, partly on account of the agreement to observe legislative restraint.

IV. Information relating to paragraph 35 of the concluding observations

12. The Committee invites the State party to consider reviewing its legislation, with a view to incorporating a declaration of absence as a result of enforced disappearance, in order to adequately address the legal situation of disappeared persons and that of their relatives in areas such as social welfare, financial matters, family law and property rights.

13. In addition to the information already provided and in response to the concluding observations of the Committee, further details are given below of the two procedures laid down in the Dutch Civil Code, which apply to all cases of disappeared persons.

14. The first procedure aims at securing proper administration of all the missing person's financial affairs during his/her absence, by making it possible to present a petition to the limited jurisdiction sector of the district court to appoint an administrator who will have the task of managing the property of the missing person and taking care of the rest of his financial affairs. This petition can be presented to the court by an interested party (e.g. a spouse or a relative) or by the public prosecutor in the following situations:

(a) if the missing person has left his residence;

(b) if his/her existence has become uncertain; or

(c) if it is impossible to contact the missing person even though it cannot be established that he/she has actually left his/her residence.

15. The second procedure enables interested parties - predominantly spouses and relatives - to petition the district court to summon the missing person to appear so that it can be established that he/she is still alive or, if the missing person does not appear, that he/she is likely to be dead. In the latter case the court will pronounce that the missing person is legally presumed to be dead. The petition can be presented once a period of five years has elapsed since the disappearance of the missing person. If the circumstances of the

disappearance make it probable that the missing person has died, that period is reduced to one year.

16. Spouses and other relatives who take care of the missing person's financial affairs rather than having a court-appointed administrator do so can encounter legal problems during the period that elapses before they are able to petition the district court to summon the missing person to appear. At the time of the most recent amendment to the law in this area, the associations representing insurance companies and banks said that, where necessary, they are willing to try to help spouses or relatives resolve legal problems that arise in relation to banking or insurance matters.

17. It is important to note that for the purposes of both procedures it is sufficient to establish that the person in question is missing. It is not necessary to prove that the disappearance was in any way of an enforced nature. This makes it easier for spouses and relatives to obtain a judgment. It also means that there is no need at present to incorporate a new procedure for a 'declaration of absence' into the existing procedures. For the purposes of the first procedure referred to above (i.e. for appointing an administrator to take care of the missing person's financial affairs) it is sufficient for the limited jurisdiction sector to establish that the person in question is actually missing; no specific declaration of absence is required. The second procedure can only be initiated by an interested party, usually the spouse or a relative of the missing person. That party therefore has the right to decide whether or not to start the procedure; there is no legal obligation to do so once the stipulated time periods have elapsed.

18. It would be legally confusing to have a single procedure that could result in two different judgments, namely a declaration of a presumption of death or a declaration of absence, having exactly the same legal consequences as those of death.